

APPROVED

BOARD OF DENTISTRY

**MINUTES
FORMAL HEARING**

TIME AND PLACE: A meeting of the Virginia Board of Dentistry reconvened on September 7, 2007, at 10:13 a.m., at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Richmond, Virginia.

FIRST FORMAL HEARING: 10:13 a.m.

PRESIDING: Paul N. Zimmet, D.D.S.

MEMBERS PRESENT: Myra Howard
Jeffrey Levin, D.D.S.
Jacqueline Pace, R.D.H.
Darryl J. Pirok, D.D.S.
Edward P. Snyder, D.D.S.
James D. Watkins, D.D.S.

MEMBERS ABSENT: Misty Sissom, R.D.H.

MEMBERS EXCUSED: Meera A. Gokli, D.D.S.
Glenn A. Young, D.D.S.

STAFF PRESENT: Sandra K. Reen, Executive Director
Cheri Emma-Leigh, Operations Manager
Catherine Chappell, Administrative Assistant
Leigh C. Kiczales, Adjudication Specialist

COUNSEL PRESENT: Howard Casway, Senior Assistant Attorney General

OTHERS PRESENT: Mary F. Treta, Court Reporter, Crane-Snead and Associates

QUORUM: With seven members present, a quorum was established.

**KATHRYN A. BIERY, D.D.S.
Case Nos. 102009, 103192, and 104672** The Board reconvened in the matter of Kathryn Biery, D.D.S. to announce the findings of fact, conclusions of law and sanctions imposed. Kathryn Biery, D.D.S. and her counsel, Gerald C. Canaan, II, Esq. were not present for the reading.

Reconvened: Dr. Snyder moved to certify that only matters lawfully exempted from open meeting requirements under Virginia law were discussed in the closed meeting and only matters as were identified in the motion convening the closed meeting

were heard, discussed or considered by the Board. The motion was seconded and passed.

The Board reconvened in open session pursuant to § 2.2-3712(D) of the Code.

Decision:

Mr. Casway read the Findings of Facts and Conclusions of Law as adopted by the Board as follows:

1. Dr. Biery holds a current Virginia dental license.
2. Dr. Biery violated § 54.1-2706(5) and (11) of the Code, and 18 VAC 60-20-15(3) of the Regulations, in that, on or about January 28, 2005, during her treatment of Patient A, a three and one-half (3½) year old female, she failed to perform and record a complete pre-operative assessment, systems review and physical findings which includes vital signs, preoperative diagnosis, ASA status, existence of an upper respiratory tract infection and recordation of a notation that lungs were clear on occultation, prior to administering Fentanyl, Versed, and Ketamine. Moreover, expert testimony established that her preoperative administration of Vistaril exceeded written FDA dosage guidelines (2 mgs per kgs or 30 mgs) for a patient of this age and weight.
3. Dr. Biery violated § 54.1-2706(5), (9) and (11) of the Code, and 18 VAC 60-20-170(5) and 18 VAC 60-20-190(8) of the Regulations, in that, on or about January 28, 2005, Dr. Biery unlawfully permitted an unlicensed individual, Dental Assistant D, to administer nitrous oxide to Patient A. Dental Assistant D testified that she placed the mask on the patient and initiated the nitrous oxide in accordance with the routine practice in place at Dr. Biery's dental office.
4. Dr. Biery violated § 54.1-2706(9) of the Code, and 18 VAC 60-20-15(3) and (7), and 18 VAC 60-20-110.E(3) of the Regulations, in that, on or about April 15, 2005, during the course of her treatment of Patient B, she failed to adequately document a pre-operative diagnosis and the procedure to be performed. Further, in Patient B's anesthesia record, Dr. Biery failed to document the person administering the anesthesia, the patient's vital signs, and noted a left buccal injection in

the anesthesia record, although the “master” patient record indicated a buccal injection on the right.

5. Dr. Biery violated § 54.1-2706(5), (9) and (11) of the Code, and 18 VAC 60-20-110.E(1) of the Regulations, in that, on or about April 15, 2005, she failed to document the existence of a treatment team of three (3) people during the administration of general anesthesia to Patient B, as required.
6. Dr. Biery violated § 54.1-2706(5), (9) and (11) of the Code, and 18 VAC 60-20-170(5) and 18 VAC 60-20-190(8) of the Regulations, in that, she routinely permitted and often telephonically instructed unlicensed staff, specifically dental assistants and EMTs, to administer anxiolysis or inhalation analgesia, deep sedation/general anesthesia and conscious sedation to patients. Dr. Biery permitted preparation and administration of oral pre-medications (the “110” or “drink” consisting of 100cc Vistaril and 10cc Versed), starting an IV line, pushing medication consisting of 1cc each of Versed, Ketamine and Fentanyl (the “cocktail”), initiating and adjusting the volume of nitrous oxide, controlling the airway of an unconscious patient and the monitoring of sedated (unconscious) patients prior to dentist’s initiation of treatment. Furthermore, parents were routinely left alone with their unmonitored child following administration of the pre-operative medications.
7. Dr. Biery testified that as a result of the initiation of the Board’s disciplinary process, she changed her office procedure in an attempt to comply with the applicable laws and regulations regarding the administration of anesthesia by unlicensed staff, although believing her prior interpretation of the laws and regulations was proper. She further testified that she has improved her recordkeeping.

The sanctions reported by Mr. Casway were that Dr. Biery be placed on indefinite probation, be subjected to three (3) unannounced inspections, complete four (4) continuing education hours in recordkeeping, seven (7) continuing education hours in risk management and four (4) continuing education hours in ethics, complete the Board’s on-line

dental law examination, and be assessed a twenty four thousand dollars (\$24,000) monetary penalty.

Dr. Snyder moved to adopt the Findings of Fact, Conclusions of Law, and the sanctions as read by Mr. Casway and issuing an Order stating such. The motion was seconded and passed.

This decision shall be effective upon the entry by the Board of a written Order stating the findings, conclusions, and decision of the Board.

**SECOND FORMAL
HEARING:**

10:43 a.m.

PRESIDING: Paul N. Zimmet, D.D.S.

MEMBERS PRESENT: Meera A. Gokli, D.D.S.
Myra Howard
Jeffrey Levin, D.D.S.
Jacqueline Pace, R.D.H.
Darryl J. Pirok, D.D.S.
Edward P. Snyder, D.D.S.
Glenn A. Young, D.D.S.

MEMBERS EXCUSED: Misty Sissom, D.D.S.
James D. Watkins, D.D.S.

STAFF PRESENT: Sandra K. Reen, Executive Director
Cheri Emma-Leigh, Operations Manager
Catherine Chappell, Administrative Assistant
Leigh C. Kiczales, Adjudication Specialist

COUNSEL PRESENT: Howard Casway, Senior Assistant Attorney General

OTHERS PRESENT: Mary F. Treta, Court Reporter, Crane-Snead and Associates

QUORUM: With eight members present, a quorum was established.

**HAYWOOD L.
PEARSON, D.D.S.
Case No. 108991** Haywood L. Pearson, D.D.S., Applicant, appeared without counsel, to discuss his reinstatement application for a license to practice dentistry in Virginia, and allegations that he may

have violated laws and regulations governing the practice of dentistry, in that:

1. He has not demonstrated continuing competency to practice dentistry with safety to his patients and the public, having not engaged in the practice of dentistry since 2000. Further the application only provides evidence of completion of eight (8) of the required fifteen (15) hours of continuing education in the twelve (12) month period preceding his application for reinstatement.
2. The sixty-seven (67) continuing education credits submitted with his application may not be sufficient to demonstrate continuing competency. Specifically:
 - a. Sixty-seven (67) hours were Internet self-study, of which fifty-nine (59) hours were earned in a two (2) day period; and
 - b. No documentation of training with a clinical component was provided.
3. On or about February 20, 2002, he was convicted of a felony in the Circuit Court of the City of Petersburg, Virginia, for practicing dentistry without a valid license from April 6, 2000 to May 1, 2000.
4. He failed to disclose his February 2002 felony conviction by either providing details of the conviction or including a copy of the court's disposition record, as required, although he answered "yes" to Question II (h) of the Application, which reads: "Have you ever been convicted of a violation of or pled *nolo contendere* to any federal, state or local statute, regulation or ordinance, or entered into any plea bargaining relating to a felony or misdemeanor"?
5. He provided false information on his Application by answering "No" to Question II (k) which reads: "Have you ever had any of the following disciplinary actions taken against your license to practice dentistry, your DEA permit, Medicare, Medicaid or any such actions pending; suspension/revocation, or probation, or reprimand/cease and desist or monitoring or practice, or limitation placed on scheduled drugs?" even though Dr. Pearson had the following disciplinary actions taken against his Virginia license:

- a. license suspended on November 14, 1989;
- b. license revoked on September 21, 1990;
- c. license reinstated on indefinite probation on September 24, 1994, and
- d. license continued on probation on February 9, 1999.

In addition, Dr. Pearson failed to disclose that on March 2, 1997, he was excluded from participation in any federal health care programs (Medicare/Medicaid) as a result of defaulting on his health education loans. By his own admission, he continued to treat Medicaid/Medicare recipients from on or about August 12, 1997 to November 19, 1999, and according to the Virginia Department of Medical Assistance Services, received payments for those services totaling \$3,344.21.

As a preliminary matter, Ms. Kiczales stated that pages 143 through 160 of Evidence #3, should be removed as it is irrelevant to the case at hand. These pages were removed from the Board members' evidence books.

The Board admitted into evidence Commonwealth's exhibits 1 through 3.

The Board admitted into evidence Respondent's exhibits A through D.

Dr. Pearson testified on his own behalf. Testifying on behalf of the Respondent was Douglas Peoples, D.D.S.

Testifying on behalf of the Commonwealth by telephone was Andrea Christian, Senior Investigator.

Closed Meeting:

Dr. Snyder moved that the Board convene a closed meeting pursuant to § 2.2-3711(A)(28) of the Code of Virginia to deliberate for the purpose of reaching a decision in the matter of Haywood Pearson, D.D.S. Additionally, Dr. Snyder moved that Board Staff, Catherine Chappell, and Board Counsel, Howard Casway, attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations. The motion was

seconded and passed.

Decision:

Mr. Casway read the Findings of Facts and Conclusions of Law as adopted by the Board as follows:

1. Dr. Pearson failed to renew his license, which expired on March 31, 2000.
2. Dr. Pearson violated § 54.1-2706(9) of the Code, and 18 VAC 60-20-20.C(3) and 18 VAC 60-20-50.H of the Regulations, in that, he failed to demonstrate continuing competency to practice dentistry with safety to his patients and the public, having not engaged in the practice of dentistry since 2000.
3. Dr. Pearson violated § 54.1-2706(9) of the Code, and 18 VAC 60-20-20.C(3) of the Regulations, in that, he failed to demonstrate continuing competency to practice dentistry with safety to his patients and the public in that the sixty-seven (67) continuing education credits submitted with his Application may not be sufficient to demonstrate continuing competency. Specifically:
 - a. Sixty-seven (67) hours were Internet self-study, of which fifty-nine (59) hours were earned in a two (2) day period; and
 - b. No documentation of training with a clinical component was provided.
4. Dr. Pearson violated § 54.1-2706(1) and (9) of the Code, and 18 VAC 60-20-170(4) of the Regulations, in that, on or about February 20, 2002, he was convicted of a felony in the Circuit Court of the City of Petersburg, Virginia, for practicing dentistry without a valid license from April 6, 2000 to May 1, 2000.
5. Dr. Pearson violated §§ 54.1-2706(2) and 54.1-2709.A of the Code, in that, he failed to disclose his February 2002 felony conviction by either providing details of the conviction or including a copy of the court's disposition record, as required, although he answered "yes" to Question II (h) of the Application, which reads: "Have you ever been convicted of a violation of or pled *nolo contendere* to any federal, state or local statute, regulation or ordinance, or entered into any plea bargaining relating to a felony or misdemeanor"?
6. Dr. Pearson violated § 54.1-2706(1) of the Code, in that

he provided false information on his Application by answering "No" to Question II (k) which reads: "Have you ever had any of the following disciplinary actions taken against your license to practice dentistry, your DEA permit, Medicare, Medicaid or any such actions pending; suspension/revocation, or probation, or reprimand/cease and desist or monitoring or practice, or limitation placed on scheduled drugs?" even though Dr. Pearson had the following disciplinary actions taken against his Virginia license:

- a. license suspended on November 14, 1989,
- b. license revoked on September 21, 1990
- c. license reinstated on indefinite probation on September 24, 1994, and
- d. license continued on probation on February 9, 1999.

In addition, Dr. Pearson failed to disclose that on March 2, 1997, he was excluded from participation in any federal health care programs (Medicare/Medicaid) as a result of defaulting on his health education loans. By his own admission, he continued to treat Medicaid/Medicare recipients from on or about August 12, 1997 to November 19, 1999, and according to the Virginia Department of Medical Assistance Services, received payments for those services totaling \$3,344.21.

The sanctions reported by Mr. Casway were that Dr. Pearson's petition for reinstatement be denied and his right to reinstate his license be revoked.

Dr. Pirok moved to adopt the Findings of Fact, Conclusions of Law, and the sanctions as read by Mr. Casway and issuing an Order stating such. The motion was seconded and passed.

This decision shall be effective upon the entry by the Board of a written Order stating the findings, conclusions, and decision of the Board.

ADJOURNMENT:

With all business concluded, the Committee adjourned at 12:47 p.m.

**Virginia Board of Dentistry
Formal Hearings
September 7, 2007**

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Paul N. Zimmet, D.D.S., Chair

Sandra K. Reen, Executive Director

Date

Date